

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEANETTE VENTRONE, ANGELA
WILLIAMS, PHOENIX PEREIRA, RAMEAK
SMITH, APRIL MOORE, and ASHLEE BACON
CANTRELL,

Plaintiff,

vs.

WEBSTER UNIVERSITY,

Defendant.

No.:

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

COMES NOW Defendant Webster University (hereafter the “University”), by and through its attorneys, and gives notice that the case of *Jeanette Ventrone, et al. v. Webster University* initiated in the Circuit Court for St. Louis County, Missouri, on or about May 5, 2022, and assigned cause number 22SL-CC02473 has on this 11th day of May, 2022, been removed to the United States District Court for the Eastern District of Missouri. As grounds for removal defendant states:

1. On May 5, 2022, six individual plaintiffs (Jeanette Ventrone, Angela Williams, Phoenix Pereira, Rameak Smith, April Moore, and Ashlee Bacon Cantrell (collectively, the “Plaintiffs”)) initiated this case by filing a Petition in the Circuit Court for St. Louis County, Missouri, in an action titled *Jeanette Ventrone, et al. v. Webster University* and there designated as case number 22SL-CC02473 (“State Court Action”).

2. Copies of the Summons and Petition filed in the State Court Action are attached hereto as Exhibit A. No further proceedings have occurred in the State Court Action. As of the time of filing this Notice of Removal, the University has not received service of the Summons and Petition.

3. Because the University has not yet been served with the State Court Action, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

4. The University is removing this case by reason of diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332, in that the University, is now, and was at the time this action was commenced, diverse in citizenship from the Plaintiffs.

5. The University is an institution of higher education, organized under the laws of the State of Missouri and headquartered in Webster Groves, Missouri. *See also* Exh. A, ¶ 2. As it is organized under the laws of the State of Missouri with its principal place of business in Missouri, and is thereby a citizen of the State of Missouri pursuant to 28 U.S.C. § 1332(c).

6. Plaintiffs are all citizens of the State of Florida. (Exh. A, ¶ 1).

7. Under the plain language of Section 1441(b), the University is entitled to remove the State Court Action on the basis of diversity jurisdiction prior to receiving service. *See Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 705-707 (2d Cir. 2019) (adopting the “snap removal” exception to the forum-defendant rule because “a home-state defendant may in limited circumstances remove actions filed in state court on the basis of diversity of citizenship – is authorized by the text of Section 1441(b)(2)”)”; *Encompass Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147, 153 (3d Cir. 2018) (allowing “snap removal”). *See also McCall v. Scott*, 239 F.3d 808, 813 n.2 (6th Cir. 2001). Notably, the U.S. District Court for the Eastern District of Missouri, has adopted the reading of Section 1441(b) set forth in *Gibbons* and *Encompass* and refused to remand a case removed prior to service by a forum defendant. *See Tillman v. BNSF*

Ry. Co., No. 1:20 CV 00178 SNLJ, 2021 WL 842600, at *5 (E.D. Mo. Mar. 5, 2021) (J. Stephen N. Limbaugh, Jr.).¹

8. Plaintiff’s Petition in the State Court Action expressly seeks damages in excess of \$75,000. (Exh. A, pp. 5, 7). The “WHEREFORE” paragraphs at the conclusion of each of the two counts alleged in the Petition state that the Plaintiffs seek compensatory damages “in a sum in excess of \$138,000, plus interest on \$23,000 from the date of payment, for each Plaintiff, until judgment is entered, plus court costs.” (*Id.*) Additionally, Plaintiffs claim the University has violated the Missouri Merchandising Practices Act (MMPA), and in connection with the alleged violation of the MMPA, Plaintiffs seek “attorney’s fees in a sum in excess of \$10,000 per Plaintiff.” (Exh. A, ¶ 33). The amount in controversy must be established by the preponderance of the evidence. *Bell v. Hershey Co.*, 557 F.3d 953, 956 (8th Cir. 2009). Thus, the minimum-amount-in-controversy threshold is satisfied under the federal removal statute.

9. Removal of this action is proper under 28 U.S.C. § 1441. This is a civil action brought in state court and this Court has original jurisdiction over the action under 28 U.S.C. §

¹ Magistrate Judge Noelle C. Collins has also reached a similar conclusion, relying on *Gibbons* and *Encompass* to deny a motion to remand where removal occurred prior to service on a forum defendant. *M & B Oil, Inc. v. Federated Mut. Ins. Co.*, No. 4:21-CV-00250-NCC, 2021 WL 3472629, at *2 (E.D. Mo. Aug. 6, 2021). After denying remand, Magistrate Judge Collins granted a motion to certify for appeal the question of whether “snap removals” should be permitted. *See M & B Oil, Inc. v. Federated Mut. Ins. Co.*, No. 4:21-CV-00250-NCC, 2021 WL 4963524, at *4 (E.D. Mo. Oct. 26, 2021). That certified appeal remains pending before the 8th Circuit Court of Appeals as of the time of filing this Notice of Removal. *See M & B Oil, Inc. v. Federated Mut. Ins. Co.*, Docket No. 21-3817 (Dec. 9, 2021).

1332, since Plaintiffs and Defendant are citizens of different states and the amount of controversy exceeds the sum of \$75,000.

10. Written notice of the filing of this Notice of Removal will be given to Plaintiffs, as required by law.

11. A true and correct copy of this notice of removal will be filed with the Clerk for the Circuit Court for St. Louis County, Missouri, as required by law.

WHEREFORE, Defendant Webster University, gives notice that the above action initiated in the Circuit Court for St. Louis County, Missouri is hereby removed to the United States District Court for the Eastern District of Missouri, Eastern Division for the reasons stated above.

ARMSTRONG TEASDALE LLP

BY: /s/ Travis R. Kearbey
Travis R. Kearbey, #58964MO
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105
Telephone: 314.621.5070
Fax: 314.621.5065
tkearbey@atllp.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2022, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and emailed to the following:

David M. Duree, MBE 21003
David M. Duree & Associates, P.C.
312 South Lincoln Avenue
O'Fallon, IL 62269
618.628.0186 (T)/618.628.0259 (F)
law@dmduree.net

ATTORNEYS FOR PLAINTIFFS

/s/ Travis R. Kearbey